

**STATE OF ILLINOIS
ILLINOIS COMMERCE COMMISSION**

**Illinois Power Company and
Ameren Corporation**

**Application for authority to engage in a
reorganization, and to enter into various
agreements in connection therewith,
including agreements with affiliated
interests and for such other approvals as
may be required under the Illinois Public
Utilities Act to effectuate the reorganization.**

Docket No. 04-0294

DIRECT PANEL TESTIMONY OF:

**MARIO A. BOHORQUEZ
WAYNE BOLLINGER
PHILIP R. O'CONNOR, Ph.D.**

ON BEHALF OF

**CONSTELLATION NEWENERGY, INC.
DIRECT ENERGY MARKETING INC.
MIDAMERICAN ENERGY COMPANY
PEOPLES ENERGY SERVICES CORPORATION**

DATED: JULY 9, 2004

Ex. A

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WAYNE BOLLINGER
PHILIP R. O'CONNOR, Ph.D.**

- 1 **Q.** **Dr. O'Connor, please state your name and your business address.**
- 2 A. Philip R. O'Connor, Ph.D. My business address is 550 W. Washington Blvd., Suite 300,
- 3 Chicago, Illinois 60661.
- 4
- 5 **Q.** **By whom are you employed and in what capacity?**
- 6 A. I am employed as Vice President with Constellation NewEnergy, Inc.
- 7
- 8 **Q.** **Mr. Bohorquez, please state your name and your business address.**
- 9 A. Mario Bohorquez. My business address is 550 W. Washington Blvd., Suite 300,
- 10 Chicago, Illinois 60661.
- 11
- 12 **Q.** **By whom are you employed and in what capacity?**

13 A. I am employed by Constellation NewEnergy, Inc. as Director, Power Supply and
14 Wholesale Operations.

15
16 **Q. Mr. Bollinger, please state your name and your business address.**

17 A. Wayne Bollinger. My business address is 205 N. Michigan Avenue, 42nd Floor, Chicago,
18 Illinois 60601.

19
20 **Q. By whom are you employed and in what capacity?**

21 A. I am employed by Peoples Energy Services Corporation as the Director of Energy
22 Supply.

23
24 **Q. On whose behalf are you testifying in the instant proceeding?**

25 A. We are testifying on behalf of Constellation NewEnergy, Inc.; Direct Energy Marketing
26 Inc.; MidAmerican Energy Company; and Peoples Energy Services Corporation
27 (collectively, the "Coalition of Retail Energy Suppliers" or "Coalition"). The positions
28 set forth herein are positions that have been developed jointly by the members of the
29 Coalition, and do not necessarily represent the positions of any one of the members of the
30 Coalition.

31
32 **Q. What are the interests of the Coalition and its members in the instant proceeding?**

33 A. The Coalition is an ad hoc group of suppliers of competitive gas and electricity either
34 currently participating in the Illinois market or contemplating entering the competitive
35 energy markets in the service territories of Illinois Power Company ("Illinois Power" or

“IP”) and/or Ameren Corporation’s (“Ameren”) AmerenCIPS, AmerenUE, and/or AmerenCILCO (hereinafter, the Illinois public utilities of Ameren are referred to as the “Ameren Companies”).

The Coalition will highlight issues regarding how the instant proceeding will impact the development of competition in the service territories of Illinois Power and the Ameren Companies. As current and prospective participants in the Illinois retail electric and gas markets, the Coalition’s members have a substantial interest in this proceeding because any Order entered by the Illinois Commerce Commission (“Commission” or “ICC”) will have an impact on the development of retail competition in the Illinois Power and Ameren Companies’ service territories.

Q. Please describe the Coalition’s interest and commitment in making customer choice work in the Ameren and IP service territories.

A. Members of the Coalition have been active participants in the Illinois retail electric market since the enactment of the Customer Choice Act. Significant time and resources have been expended by the members of the Coalition in Commission-sponsored workshops, meetings, rulemakings, and litigated proceedings to define (and refine) various aspects of the competitive marketplace in Illinois.

The members have a wealth of experience in operating in well-functioning competitive markets in Illinois and in other jurisdictions. Based upon that experience, the members of the Coalition have devoted significant resources in an attempt to improve the prospects

for the development of competition in the service territories of Illinois Power and the Ameren Companies. We remain committed to working with Ameren, IP, the Commission Staff, and other stakeholders toward that goal.

SUMMARY OF POSITION

Q. Please summarize the position of the Coalition's members regarding the Ameren Companies' proposed acquisition of Illinois Power in the instant proceeding.

A. Significantly, the Coalition is not suggesting that the Commission reject or even delay the proposed acquisition. Rather, the Coalition believes that the Commission should take full advantage of the opportunity presented by this proceeding to ensure that Illinois Power and the Ameren Companies adopt business practices that will foster the development of the competitive market in their respective service territories.

Commission reports have consistently pointed to the fact that retail competition has failed to develop in the service territories of Ameren Companies and Illinois Power; whereas retail competition has developed to an appreciable level in the service territory of Commonwealth Edison Company ("ComEd"). (See ILL. COMM. COMM'N, *Competition in Illinois Retail Electric Markets in 2003*, April 2004 at i-ii, 1,4; see generally ILL. COMM. COMM'N, *Assessment of Competition in the Illinois Electric Industry in 2002*, April 2003 and *Assessment of Competition in the Illinois Electric Industry: Findings and Recommendations*, January 2003.) The Coalition wishes to highlight for the Commission some of the reasons why, from the standpoint of retail competitive providers, competition has not developed in the Ameren and Illinois Power service territories. The Coalition also will offer recommendations that foster the development of retail competition in

Illinois Power's and the Ameren Companies' service territories based upon the following overarching principles:

- Supporting retail tariff terms and conditions and business practices that promote the development of customer choice;
- Removing barriers to market entry for Retail Electric Suppliers ("RESs"); and
- Supporting Midwest Independent System Operator ("MISO") tariff provisions and policies that support retail competition as designed by this Commission and the Public Utilities Act.

The lack of competitive development in the service territories of the Ameren Companies and IP is neither merely a chance result nor the simple effect of low bundled rates in those service areas. Rather, much of the difference between competitive development in the ComEd service territory and development in the territories of the Ameren Companies and IP derives from explicit utility policies and practices over which the Commission has either direct control or considerable influence through this and other proceedings.

The lack of competition in the Illinois Power and Ameren Companies service areas, combined with the reasonable recommendations herein, provide a compelling case for the Commission to ensure that the Ameren Companies and Illinois Power adopt pro-competitive tariff terms and business practices.

Q. Why should the Commission be concerned about the lack of competition in the Ameren Companies and Illinois Power service territories as it considers Ameren's acquisition of Illinois Power?

A. After nearly five (5) years of customer choice implementation, and with more than two (2) years left in the statutorily mandated transition period, the instant proceeding provides

107 the Commission with an opportunity to bring the promised benefits of both wholesale and
108 retail competition to customers in the service territories of Illinois Power and the Ameren
109 Companies. Taking action now, prior to the end of the statutorily defined transition
110 period for retail electric choice, is necessary so that consumers may experience exactly
111 what the General Assembly intended - a meaningful transition to vibrant competitive
112 wholesale and retail markets.

113
114 Significant and beneficial changes are coming to Illinois consumers through the
115 development of functioning Regional Transmission Organizations ("RTOs"). The
116 Ameren Companies are operating under Day 1 of MISO; Illinois Power is scheduled to
117 begin MISO Day 1 operations in September 2004; and ComEd recently integrated into
118 the markets of the PJM Interconnection, L.L.C. ("PJM"). Although there are competitive
119 benefits yet to be realized by consumers, numerous existing utility tariff provisions and
120 transmission business practices of both the Ameren Companies and Illinois Power
121 continue to frustrate the development of retail competition and deprive consumers of the
122 potential benefits of competition. ComEd has developed tariff proposals and business
123 practices that ostensibly support open access and simplified processes for Retail Electric
124 Suppliers ("RESs") throughout the transition period; IP and the Ameren Companies,
125 however, have maintained tariffs and business practices that thwart the development of
126 competition in their respective service territories. These practices require that the
127 Commission consider strong measures to open up these service territories to customer
128 choice.

130 **Q. Why should the Commission be concerned about the transmission policies and**
131 **practices of Illinois Power and the Ameren Companies?**

132 A. Unless the Commission addresses these unnecessary noncompetitive tariff and
133 transmission-based obstacles, Ameren's proposed acquisition of Illinois Power cannot be
134 interpreted as promoting the development of both wholesale and retail competition. Such
135 action is inconsistent with the pro-competitive policies that the General Assembly and the
136 Commission have endorsed.

137
138 For purposes of this testimony, the Coalition presumes that IP and the Ameren
139 Companies will operate under or continue to operate under "Day 1" of the MISO Open
140 Access Transmission Tariff ("OATT") as of September 1, 2004. However, it is not
141 certain that IP will transition to MISO Day 1 operations by the aforementioned date or
142 prior to a Final Order in the instant proceeding. Additionally, the Federal Energy
143 Regulatory Commission ("FERC") has indicated that MISO "Day 2" will occur on March
144 1, 2005, at the earliest. Even a "minor" slippage in the implementation date for MISO
145 Day 2 could translate into a significant delay of seven (7) months (until October 1, 2005),
146 if you assume that MISO would not implement its EMT during the summer months.

147
148 The Coalition does not accept, and urges the Commission to reject, the contention of
149 Ameren and IP that membership in the MISO and the MISO's rules will alleviate the
150 serious obstacles to the development of retail customer choice. Accordingly, the
151 Commission should condition its approval of Ameren's proposed acquisition of Illinois

Power upon changes being made to transmission service business practices so that they mirror existing MISO operations within thirty (30) days of a Final Order.

This proceeding provides an excellent opportunity for the Commission to take decisive steps now to address and remove the obstacles to the development of a vibrant competitive market.

Q. Please summarize the issues that you will address in your testimony.

A. Unfortunately, neither Illinois Power nor the Ameren Companies have implemented their retail tariffs and related business practices in a manner that supports the development of competition. Various elements of the transmission service business practices of Illinois Power and the Ameren Companies are fundamentally hostile to competitive retail choice in Illinois as they relate to implementation and interpretation of the MISO OATT. Uniform and common pro-competitive business practices should be implemented across all of the Ameren Companies and Illinois Power. After discussing the background current state of competition and customer choice in Illinois, we will address the following major issues:

(1) **In order to foster retail competition, implementation of pro-competitive transmission business practices should be adopted in conjunction with the acquisition.** The MISO OATT offers benefits to support retail competition; however, IP and the Ameren Companies have negated these benefits by interpreting them through burdensome processes or imposing additional requirements not imposed upon other load serving entities ("LSEs") in the MISO

footprint. The IP and Ameren business practices render conducting business within their service territories economically and operationally unattractive. Further, in those cases where MISO OATT tariff provisions or business practices do not support retail competition (e.g., MISO's current FTR allocation methodology for RESs), the Ameren Companies and IP should work jointly with other interested parties to develop competitive policies via the MISO stakeholder process.

- (2) **Illinois Power's retail business practices should be modified in conjunction with the acquisition to encourage competition.** IP's business practices have hindered the development of retail choice. Business practices, as they relate to transactions between and among RESs and retail customers, are as important as the individual words in the tariffs. For instance, implementation of retail tariffs via business practices can render a customer's switch to RES service either a simple and beneficial choice or a burdensome and complex nightmare.

BACKGROUND AND CURRENT STATE OF COMPETITION AND CUSTOMER CHOICE IN ILLINOIS

Q. How has competition developed in Illinois since the advent of open access on October 1, 1999?

A. Although the General Assembly established a phased-in approach to implement open access and customer choice in Illinois, the actual development of competition has occurred at a different pace in each of the state's service territories. ComEd and the downstate utilities of the Ameren Companies and Illinois Power share many similarities that render the respective service territories attractive to RESs. Despite these common market attributes, however, fairly robust competition has developed in the ComEd service

territory but has lagged downstate. Much of what has been represented as competitive development in the Ameren Companies and IP service territories has actually been legacy special contracts and the Power Purchase Option ("PPO") enlistment. RESs are directly serving only a handful of very large customers in the downstate service territories. The over reliance by customers on Illinois Power's PPO is a good illustration of the difficult and complex process customers face in attempting to effectuate retail choice. As a general matter, customer choice for medium industrial and commercial class customers in the IP service territory has been inconsequential.

Q. What are some of the statistics and indicators that one could review to determine the development of competition in Illinois?

A. There are a number of indicators of competitive development, including switching statistics published by the Commission, reports issued by the Commission and the utilities, and the number of active RESs in a particular service territory.

Q. What do the most recent switching statistics demonstrate about the development of competition in Illinois?

A. Based upon the Commission's most recently published switching statistics, significant customer switching has occurred within the ComEd service territory, while very little switching has occurred within the service territories of Illinois Power and the Ameren Companies. Indeed, as of the end of 2003, almost 99% of IP's delivery services customers under one (1) megawatt ("MW") were taking PPO service and about 80% of IP's larger-use delivery services customers had switched to the PPO. (See

ILL. COMM. COMM'N, *Competition in Illinois Retail Electric Markets in 2003*, April 2004 at i-ii, 1,4. See also ILL. COMM. COMM'N, *Assessment of Competition in the Illinois Electric Industry in 2002*, April 2003; and *Assessment of Competition in the Illinois Electric Industry: Findings and Recommendations*, January 2003.)

Q. How many alternative retail electric suppliers or retail electric suppliers are active in the ComEd service territory compared to the AmerenCIPS, AmerenUE, AmerenCILCO and Illinois Power service territories?

A. In the ComEd service territory, nine (9) RESs are registered to participate in the marketplace, one (1) of which is an affiliate of ComEd. In IP's service territory, eight (8) RESs are registered, three (3) of which are affiliates of Ameren or IP. In the Ameren Companies' service territory, only five (5) RESs are registered, two (2) of which are Ameren affiliates.

Q. Have there been recommendations for how to foster the development of competition in the Ameren and Illinois Power service territories that would be instructive for the Commission?

A. Yes. Since the Commission began the process of implementing the Customer Choice Act, numerous recommendations have been advanced for revisions to tariff provisions and business practices of the Illinois utilities in order to make the "rules of the game" more uniform and consistent. (See *Assessment of Competition in the Illinois Electric Industry* at 24; see also ICC Docket Nos. 99-0117; 00-0490; 01-0423 and Docket Nos.

02-0656, 02-0671, 02-0672 (consolidated).) However, the Commission thus far has not mandated statewide uniformity for existing retail and wholesale business practices.

Q. Is the lack of development of customer choice a result of the limited entry by RESs into the IP and Ameren Companies service territories?

A. The limited entry of RESs into the IP and Ameren Companies' service territories is a direct consequence of the lack of competitive opportunity in those particular markets. RESs are well aware of the obstacles to competition in those markets and, as rational organizations, have not expended significant resources to enter markets or expand marketing efforts where they perceive a limited opportunity for customer choice. The lack of RES activity in the service territories of IP and the Ameren Companies speaks for itself. Given the size of these service territories, the aggressive marketing efforts at work in the ComEd service territory, and the General Assembly's support for retail competition, it seems reasonable to expect that competition would have developed were IP and the Ameren Companies supportive of such efforts. However, as demonstrated by the Commission's January 2003, April 2003 and April 2004 reports, sparse retail electric supplier activity has occurred in the IP and Ameren Companies' service territories. The Commission, therefore, should employ the instant proceeding as the vehicle to establish the framework necessary for retail competition to develop in Illinois Power's and the Ameren Companies' service territories.

**EXISTING OATTs AND BUSINESS PRACTICES RELATED TO THE
RESERVATION OF TRANSMISSION SERVICE ACT AS AN IMPEDIMENT TO COMPETITION**

Q. Please discuss the process of reserving of transmission service in the Ameren Companies' service territories under MISO Day 1.

A. Ameren is currently under MISO Day 1 operation. Under Day 1 operation, Load Serving Entities ("LSEs"), including RESs, are required to submit a transmission reservation to serve retail load.

As in the PJM structure, under the MISO OATT, an LSE may submit a reservation request for firm transmission service for periods of time as short as a day or a month or for longer terms such as a year or longer.

Unlike PJM in which an established capacity market exists, MISO requires a designated network resource to be identified on a transmission reservation. This obligation may be transmission-contingent and is not "unit-specific." The designated resource may be identified by the location of the designated network resource (e.g. Cinergy control area or MidAmerican control area). MISO does not require the LSE to specifically identify a customer specific delivery point.

Based upon the Coalition's experience of operating in other retail markets in which MISO is providing Day 1 service, MISO rules for initiating system study impact analyses have been reasonable to date. However, we are concerned about the way in which MISO is operating within Ameren control area. Surprisingly, recently MISO initiated a system

288 impact study for a 25 MW network transmission service request involving both a network
289 resource and network load located within the Ameren control area. It appears that
290 Ameren still has considerable influence over MISO regarding whether and how system
291 impact analyses are to be conducted for network transmission reservation requests to
292 serve network load within the Ameren control area. As discussed further below, the
293 Coalition recommends that impact studies should not be conducted for Network
294 Integration Transmission Service ("NITS") service satisfying retail load when power and
295 energy is purchased within the MISO footprint and delivered within the MISO footprint.

296
297 **Q. Please describe the current IP transmission reservation process and the impact that**
298 **it has upon the development of retail competition in that service territory.**

299 A. The IP transmission reservation process is an obstacle to retail competition. Under the
300 existing process for NITS reservations, the RES is limited to a single request of 25 MW
301 (or multiple reservations not to exceed an aggregate of 25 MWs at any point in time)
302 unless it **first** designates a specific end-use consumer at the time of the reservation. IP
303 limits the reservation request(s) to a term of no longer than thirteen (13) months and
304 maintains that for NITS service a unit-specific resource must be designated. The 25 MW
305 limitation on retail electric suppliers in and of itself is a barrier to retail competition.
306 Further, requiring firm transmission service for a term of thirteen (13) months or less
307 imposes a restriction that is unnecessary and inconsistent with the OATT terms of the
308 Ameren Companies.

310 All reservations under this system must be for service beginning within six (6) months of
311 the reservation request date. Reservations made and approved under this scheme are
312 eligible for rollover following the thirteen (13) month term in accordance with the IP
313 OATT, except that any used amount of any yearly reservation will not retain rollover
314 rights. The RESs refer to this scheme as the "Rolling-25 MW" transmission service
315 because as soon as a RES has contracted with a specific end-use customer for retail
316 electric service and designated that customer to IP, that customer's load is removed from
317 the 25 MW reservation and the amount is "freed" up for another reservation request, thus
318 a RES always has 25 MWs of NITS in hand. Why IP would need to know the identity of
319 a RES's customer for transmission service is not fully understood, nor is it a practice of
320 any other Illinois utility.

321
322 **Q. Do you anticipate that IP is going to change its current transmission reservation**
323 **process even absent a Commission Order in the instant proceeding?**

324 A. Yes. It is anticipated that IP will be operating under Day 1 MISO operations by
325 September 2004. At that time, the reservation process with MISO outlined above for the
326 Ameren Companies will be the same process RESs will follow in the IP service territory.
327 However, the Commission should not permit IP or Ameren to impose additional
328 requirements on RESs above those imposed by MISO.

329
330 **Q. Please contrast the competitive impact of IP's current transmission reservation**
331 **process with the transmission reservation process that ComEd utilized prior to**
332 **joining PJM.**

333 A. The experience with ComEd illustrates that even prior to joining an RTO, a utility (in this
334 case, Illinois Power) can and should adopt business practices that foster the development
335 of retail competition. Under ComEd's pre-PJM transmission rules, RESs were not
336 required to acquire a network resource at the time a transmission reservation request was
337 submitted. As a result, RESs were not put in the position of assuming the financial risk
338 to buy capacity without transmission or paying a premium for transmission-contingent
339 capacity and supply agreements. This promoted competition by decreasing RESs risks,
340 resulting in lower costs and better opportunities for customer savings. Finally, potential
341 customers did not have to assume the unacceptable risk of missing a supply opportunity if
342 a transmission reservation was denied.

343
344 **Q. Please discuss how the process for reserving transmission service in the Ameren and**
345 **Illinois Power service territories should be modified to facilitate RESs serving retail**
346 **customers.**

347 A. There are a number of important revisions that Ameren and Illinois Power can make in
348 order to promote the development of competition.

349
350 At a minimum, the Commission should mandate that Illinois Power and the Ameren
351 Companies modify their tariffs, business practices, RES handbooks, and company
352 guidelines to reflect MISO business practices and guidelines and OATT terms and
353 conditions. These guiding documents today reflect much more restrictive rules and
354 guidelines than those of the MISO. If not modified, it is reasonable to assume that
355 marketers wanting to enter this market would be dissuaded, since IP's and Ameren's

written business practices impose costs and obligations that would hinder retail competition. Any terms or conditions imposed on RESs which are more restrictive than MISO tariffs or business practices should be eliminated.

Moreover, IP's current transmission practices will continue to constitute substantial barriers to the development of competition until IP joins the MISO. If the September 2004 timeline for IP operating under MISO Day 1 is delayed beyond the date of a Final Order in the instant proceeding, IP should be required to modify its existing transmission reservation process within thirty (30) days of a Final Order in this proceeding.

Illinois Power and the Ameren Companies also should be required to advocate (or explain to the Commission why they will not advocate) for tariff change at the MISO to support retail competition in those control areas that are opened to customer choice.

Q. Please provide some examples of IP's tariff provisions and business practices that should be eliminated.

A. Examples of specific elements of tariffs or business practices that should be eliminated include:

- Identification of unit-specific capacity resources for Direct Access Service Request ("DASR") customer enrollments (that is, Firm Liquidated Damages contracts should be accepted to satisfy designated network resource requirements);
- Identification of the end-use customer for transmission service;
- Inconsistent definitions of energy peak periods for bundled and unbundled tariffs;
- Artificial caps on the amount of transmission reservation requested by RESs; and

- Restrictions on the type of NITS service should be removed, specifically allowing market participants to procure NITS on a Day-Ahead basis.

Q. What types of MISO tariff changes should IP and Ameren be required to advocate?

A. Illinois Power and Ameren should be required to advocate for MISO tariff changes that would promote retail competition in their service areas or provide a legitimate explanation why they will not advocate for such changes.

- Specific system impact studies should not be required for NITS service when power and energy is purchased for retail load within the MISO footprint and delivered within the MISO footprint.
- Reciprocal acceptance of designated resources between the Ameren and IP control areas should be outlined through a joint operating agreement between and among the control areas and the MISO.

The Commission should order Ameren to work out a joint operating agreement to permit reciprocal acceptance of network resources between the control areas of the Ameren Companies and IP. As such, all interconnected generating resources behind Ameren and Illinois Power would be pre-approved network resources, and all reasonable NITS requests from these resources would be granted automatically for the purposes of serving retail load anywhere within the Ameren and Illinois Power control areas. An operating agreement of this nature would greatly benefit retail competition by reducing the uncertainty and delay risk associated with the system impact study process.

EXISTING APPROACHES OF ILLINOIS POWER AND THE AMEREN COMPANIES TO ADDRESS
ENERGY IMBALANCES ARE AN IMPEDIMENT TO THE DEVELOPMENT OF COMPETITION

Q. What are "energy imbalances"?

A. Energy imbalances result from differences between energy scheduled by the transmission customer and energy consumed by its load. (Energy consumed is the metered usage adjusted for distribution losses.) In the case of a RES, an energy imbalance is the difference between energy scheduled by the RES and the energy that is delivered (actual energy consumed) to the RES's customers. For example, assume that a RES has submitted an energy schedule for 25 megawatt-hours ("MWh") for a one-hour period and its customers' actual consumption is 20 MWh for that same one-hour period. The energy imbalance for that hour is 5 MWh.

Q. Please describe "under-deliveries" and "over-deliveries" as they relate to energy imbalances.

A. Energy imbalance "over-deliveries" and "under-deliveries" result when energy delivery schedules differ from actual energy consumption on an hourly basis. An **under-delivery** of energy occurs when the RES' customers' actual hourly energy consumption is greater than the amount of energy scheduled by the RES. Thus, if the energy scheduled by the RES is 25 MWh for a one-hour period, but the actual energy consumption over that same one-hour period is 28 MWh, an under-delivery of 3 MWh has occurred for that hour. Conversely, an **over-delivery** of energy occurs when the RES's customers' actual hourly energy consumption is less than the hourly amount of energy scheduled by the RES. Thus, if 25 MWh is the hourly quantity of energy scheduled and the RES's customers'

actual energy consumed was only 22 MWh, an over-delivery of 3 MWh occurs for that hour.

Q. Do you have any recommendations regarding the provision of energy imbalances at retail?

A. Yes. The Commission should consider the overarching principles that were proposed in ICC Docket No. 98-0680. These principles are still applicable today as appropriate settlement procedures for energy imbalances that encourage rather than stifle retail competition:

- The settlement process should be equitable to all parties, including utilities and RESs;
- The settlement process should be clear and understandable;
- The Commission should adopt policies and procedures that foster and encourage competition rather than frustrate competition;
- The settlement process should address financial harm from energy imbalances based on costs actually incurred;
- The settlement process should assess financial responsibility for energy imbalances based upon costs actually incurred;
- Any "penalties" assessed should be based on costs incurred and actual financial harm experienced by the system; and
- Any system financial benefits a RES provides as a result of an imbalance should be credited to that RES in an amount equal to the value of the system financial benefit provided.

The Commission should recommend that the Ameren Companies and Illinois Power file revised energy imbalance tariff provisions with the FERC that are consistent with the principles stated above. In order for retail competition to develop in the Ameren Companies and Illinois Power service territories, the Commission must ensure that it

establishes and advocates policies that encourage the growth of a competitive retail market.

Q. Please discuss how ComEd assessed energy imbalances prior to it being integrated into the PJM Regional Transmission Organization.

A. Prior to transferring the administration of its transmission system to PJM, ComEd, through its OATT, administered a reasonable process to manage RESs' imbalances within its control area. ComEd's energy imbalances for a RES were calculated for each hour, and reconciled with hourly cash settlements. A RES whose energy imbalance in any hour was within the greater of 2% of actual usage, or 2 MW, settled at 100% of ComEd's out-of-pocket costs ("OPC"), regardless of the RESs' net imbalance or direction of the error. If the net hourly retail imbalance for all the RESs exceeded 100 MW, then the RESs that were out of balance in the direction of the net imbalance would incur an adder (or discount) of 10% on the OPC settlement. The allocation among the contributing RESs was based on their ratio-share to the total imbalance that was in excess of their individual band of the greater of 2% of actual usage, or 2 MW. If a RES's imbalance was 25% or more of the scheduled flow for 10% or more of the hours in the month, then the RES would pay an adder (or discount) of 25% of the OPC. The 25% adder (or discount) would apply to all hours in which the imbalances exceeded 25%.

Q. Why is the ComEd energy imbalance provision (pre-PJM) appropriate for service territories open to retail competition?

474 A. ComEd's retail imbalance service: (i) encouraged accurate forecasting and scheduling,
475 (ii) deterred RESs from gaming the transmission system, and (iii) protected ComEd
476 against financial and operational risks during those hourly periods that the RES
477 scheduling activities yielded excessive net under-delivery or over-delivery imbalances.
478 ComEd's energy imbalance provision balanced the financial and operational harm to
479 ComEd against the RESs need for flexibility.

480
481 **Q. Were there other benefits associated with ComEd's retail energy imbalance service?**

482 A. Yes. ComEd's energy imbalance provisions balanced the financial exposure of both
483 ComEd and RESs, both through having all payments for hourly imbalances in cash and
484 through the use of appropriate bandwidths. Because ComEd calculated imbalances on
485 an hourly basis, ComEd was protected against financial risks of RESs under-supplying
486 during periods of the day or month when prices were high and offsetting the under-supply
487 with over-supply during periods when prices were comparatively lower.

488
489 **Q. Please discuss how Illinois Power assesses energy imbalances.**

490 A. For imbalances in the same direction as the aggregate system imbalance, Illinois Power's
491 OATT allows for an individual RES imbalance delivery band of the lesser of 10% of
492 scheduled load or 2 MW, to be settled at 100% of Illinois Power's Settlement Price
493 ("SP"). If the individual RES exceeds its imbalance delivery band, and the net retail
494 imbalance is within tolerance, then the RES would settle at 115% of the SP on all under-
495 deliveries that exceed the individual bandwidth, or receive credit of 85% of the SP for
496 over-deliveries that exceed the individual bandwidth. Illinois Power's system bandwidth

for each hour is an amount equal to the load ratio share of the sum of reserve capacity and Network Load taking service under Schedule 4R of IP's OATT (Retail Load Energy Imbalance Service) during the peak hour in the month divided by the Total Control Area Peak Load multiplied by 60 MW, but never less than 20 MW.

If the net retail imbalance exceeds the RES system bandwidth, and the RES's individual imbalance is in the same direction as the net retail imbalance and greater than 2 MW, then the RES may be subject to multi-tiered settlement charges (or credits) depending on the RES's imbalance percentage. Penalties are charged on the full imbalance within each range as follows:

- For under-deliveries under 3%, the settlement charge is 100% of SP;
- For under-deliveries over 3% but less than or equal to 5%, the settlement charge is 105% of SP;
- For under-deliveries over 5% but less than or equal to 10%, the settlement charge is 115% of SP;
- For under-deliveries over 10%, the settlement charge is at 125% of SP;
- For over-deliveries under 3%, the settlement credit is 100% of SP;
- For over-deliveries 3% but less than or equal to 5%, the settlement credit is 95% of SP;
- For over-deliveries 5% but less than or equal to 10%, the settlement credit is 85% of SP; and
- For over-deliveries over 10%, the settlement credit is at 75% of SP.

IP also has a "frequent offender" penalty for inaccurate scheduling. A RES with individual imbalances greater than 2MW in 10% or more of the hours in a month and

over-delivery or under-delivery percentages greater than 10% in 10% or more hours of the month will be subject to a charge equal to 10% of SP.

In addition, for imbalances in the opposite direction of the aggregate system imbalance, IP will charge or credit at 100% of SP.

Q. How do Illinois Power's energy imbalance service provisions compare to ComEd's pre-PJM imbalance service provisions?

A. Like ComEd's pre-PJM energy imbalance service, Illinois Power's energy imbalance service is designed to: (i) encourage accurate forecasting and scheduling, (ii) deter RESs from gaming the transmission system, and (iii) protect Illinois Power against financial and operational risks during hourly periods when the net RES activity yields under-delivery or over-delivery imbalances, but IP's imbalance service is **more restrictive, more complicated, and more punitive** than ComEd's.

Q. Please discuss Ameren's process for assessing energy imbalances.

A. Ameren's imbalance rules are similar to Illinois Power in terms of the application of penalties outside a narrow bandwidth – the greater of 2 MW or 1.5% of schedule. However, there is no bandwidth on the net of all RESs imbalances. In the Ameren service territory, an over-delivery situation (when the bandwidth is exceeded) results in an automatic penalty equal to 10% of Ameren's avoided OPC. For an under-delivery situation, there is no energy charge penalty though there may be a daily capacity charge if the net system under-delivery (the net for all RESs) is greater than zero. The charge is

544 calculated by taking the largest on-peak hourly under-delivery imbalance for each day,
545 when the net system under-delivery is greater than zero, and multiplying it by
546 \$205.15/MW-day. \$205.15/MW-day is an excessively high charge for capacity. As a
547 reference point, PJM charges roughly \$160/MW-day in the event of a capacity
548 deficiency; more importantly, PJM does not impose a capacity charge in the event of an
549 imbalance situation. Monthly settlement statements are provided 45-120 days after the
550 end of the delivery month. PJM's statements include hourly imbalances in terms of
551 MWhs and a summary of charges broken out by OATT Schedules. In contrast, Ameren
552 does not provide a breakdown or back-up support for the hourly imbalance costs or
553 imbalance penalties.

554
555 **Q. How do Ameren's energy imbalance service provisions compare to ComEd's**
556 **imbalance service provisions for RESs?**

557 **A.** Ameren's energy imbalance service is designed in a similar manner to that of ComEd and
558 Illinois Power in that it: (i) encourages accurate forecasting and scheduling, (ii) deters a
559 RES from gaming the transmission system; and (iii) protects Ameren against financial
560 and operational risks during hourly periods when the RESs' energy scheduling activities
561 yield under-delivery or over-delivery imbalances. However, Ameren's energy imbalance
562 service, like that of Illinois Power, is applied in a **more restrictive, more complicated,**
563 **and more punitive** manner than ComEd's.

564
565 Ameren's process is more stringent than ComEd's in that a RES is automatically charged
566 a penalty in an over-delivery situation should it drift outside its narrow bandwidth. In an

under-delivery situation, the RES is exposed to expensive capacity charges if the net RES position is an under-delivery condition. ComEd's process is not as punitive as Ameren's and provides more flexibility to all RESs.

Q. How have Illinois Power's and Ameren's provisions for assessing energy imbalances affected the development of competition?

A. The energy imbalance provisions of Illinois Power and Ameren add disproportional risk and costs that RESs must manage in order to serve competitive retail load in these respective service territories. The following aspects of the energy imbalance service provisions make it challenging to manage energy imbalance risk and therefore expensive for RESs to serve customers in the Ameren and Illinois Power service territories:

- Narrow scheduling tolerances in a wholesale market that lacks sufficient liquidity to support the of provision relatively small and varying amounts of hourly energy schedules at a reasonable price;
- Punitive and excessive capacity charges are assessed upon RESs; and
- Multi-tier penalties are unpredictable and are linked to unpredictable RESs' system bandwidths.

As a consequence of the higher financial risks found in the imbalance service provisions of Illinois Power and Ameren, retail customers receive relatively higher price quotes than in the ComEd service territory. Higher prices have the effect of lowering retail customers' savings opportunities, and thus diminish retail competition in the Illinois Power and Ameren Companies service territories.

Q. What recommendations do you have for changes to the Ameren and Illinois Power energy imbalance provisions to promote retail competition?

A. Ameren and Illinois Power should agree to revise their OATT tariff provisions to implement the procedures previously utilized by ComEd under its OATT (pre-PJM) for the treatment of energy imbalances until MISO Day 2. As discussed above, the start date for MISO Day 2 remains uncertain. ComEd's energy imbalance provisions were designed to take into account retail competition in that: (i) there was only a single bandwidth; (ii) there was a net bandwidth applicable to all RESs before penalties were assessed; (iii) the imbalance provision was designed to penalize those that frequently scheduled incorrectly, as opposed to those that occasionally scheduled incorrectly due to operational issues; and (iv) the imbalance provision ensured that adders/discounts were not charged to RESs for imbalances beyond their control (e.g. ComEd's interruptions and restorations or *force majeure* events). The Commission should have no tolerance for the utility refrain that legacy billing systems cannot be revised to accommodate competition. ComEd's was able to implement these imbalance provisions effectively years ago; there is no legitimate reason for IP and the Ameren Companies to delay any longer.

**REVISIONS TO THE EXISTING OATTs AND BUSINESS PRACTICES
RELATED TO TRANSMISSION SERVICE ARE NECESSARY TO PROMOTE COMPETITION**

Q. Please generally discuss the transmission business practices of ComEd.

A. ComEd's pre-PJM and post-PJM transmission business practices were discussed above. Many of ComEd's pre-PJM business practices were critical to the support and development of a deregulated marketplace that transitioned smoothly into PJM. Unfortunately, the practices of Illinois Power, and of the Ameren Companies under MISO Day 1 operations, do not bode well for a fairly smooth transition to MISO Day 2 markets.

616

617 **Q. What other recommendations do you have for improvements to the transmission**
618 **business practices of Ameren and Illinois Power in order to promote the**
619 **development of competition?**

620 A. In addition to the many changes outlined above, Ameren and Illinois Power also should
621 electronically provide detailed calculations (workpapers) of transmission and
622 transmission related costs (ancillary services, network transmission, imbalance, etc.)
623 associated with serving retail load, together with the total settlement bill, no later than
624 forty-five (45) days after the end of the month and should include a breakdown of the
625 hourly imbalance costs and penalties, if any.

626

627 **Q. Please explain the time it takes to obtain pricing detail to support invoices from**
628 **Ameren and IP for transmission service.**

629 A. It oftentimes takes more than sixty (60) days to obtain transmission services pricing
630 information. This extensive lag is unacceptable and places additional accounting burdens
631 upon RESs and their retail customers to ensure that the true costs of service are being
632 tracked and allocated accurately. Delays in receiving a detailed invoice also cause
633 customers to question the credibility of the RES, as customers are not accustomed to such
634 accounting delays under bundled electric service. The perceived lack of credibility of the
635 RES hinders the development of retail competition. Additionally, the lack of
636 transparency in the derivation of customer charges inhibits the development of retail
637 products that depend on timely, accurate, and reliable hourly prices for imbalance

638 settlement purposes. Customers should be empowered to compare offers from RESs and
639 the incumbent utility tariff services on an “apples to apples” basis.

640
641 **Q. How do Ameren and IP currently provide hourly imbalance files to RESs?**

642 A. Ameren currently allows transmission customers or RESs to personally view the hourly
643 OPC only at its headquarters in St Louis, Missouri. Alternatively, a RES may request an
644 electronic release of the data values from Ameren Transmission. However, Ameren
645 provides such data six (6) months after the service month has elapsed. Illinois Power
646 recently modified its internal practices relating to the provision of hourly imbalance
647 settlement prices. According to Illinois Power, the applicable statement price now will
648 be disclosed. Further, electronic data allegedly will be available from IP upon request
649 approximately forty-five (45) days following the service month. The Ameren Companies
650 should be able to meet this same timeframe.

651
652 **Q. Is it reasonable for the Commission to allow Illinois Power and the Ameren**
653 **Companies’ existing OATT tariff provisions and business practices to remain**
654 **unchanged until MISO’s Energy Markets Tariff becomes effective?**

655 A. No. It is neither reasonable nor prudent for the Commission to allow Illinois Power and
656 the Ameren Companies’ existing OATT tariff provisions and business practices to remain
657 unchanged until the MISO Energy Markets Tariff (“EMT”) becomes effective on MISO
658 Day 2. It is not reasonable for the Ameren Companies or Illinois Power to contend that
659 membership in the MISO and MISO rules will alleviate the serious obstacles to the
660 development of retail competition in Illinois. At this time, the FERC has indicated that

MISO Day 2 will occur no earlier than March 1, 2005. Various elements of the currently effective MISO OATT and the business practices of both Illinois Power and the Ameren Companies are fundamentally flawed and inhospitable to retail competition in Illinois. Both the Ameren Companies and IP should be required to implement MISO OATT tariff provisions and pro-competitive business practices supporting those provisions as soon as possible. The time for Illinois Power and the Ameren Companies to implement OATT tariff provisions that promote retail competition in Illinois is **NOW**. The implementation of MISO Day 2 will be smoother if both IP and Ameren immediately commit to work under common business practices that are supportive of the Day 1 MISO OATT.

**MORE FLEXIBLE RETAIL BUSINESS PRACTICES AND
RETAIL TARIFF CHANGES ARE NECESSARY IN ORDER FOR THE
DEVELOPMENT OF CUSTOMER CHOICE IN THE ILLINOIS POWER SERVICE TERRITORY**

Q. What retail business practices and tariff provisions of Illinois Power should be modified in order to promote the development of customer choice and competition in the Illinois Power service territory?

A. Various provisions of Illinois Power's bundled and delivery services tariffs impede the ability of customers to reap the benefits of customer choice and impede the ability of RESs to serve retail customers. Some of those provisions include:

- The inability of a RES to obtain all PPO pricing data elements, including transmission and ancillary services and the daily load profiles used in the IP service territory since they change daily makes modeling of the MVI extremely difficult for RESs.
- IP should adopt a form of the ComEd Rider TS-type tariff to reflect the transmission and ancillary service charges embedded into the MVI methodology so that customers have a transparent mechanism with which to calculate their energy costs that also enables customers to compare RES offerings on an "apples-to-apples" basis.

- 689 ○ In the alternative, instead of providing daily load profiles, IP could
690 eliminate the hourly on-peak market values and use monthly on-peak
691 market values which would permit RESs access to all relevant data points
692 to calculate the market value index and greatly simplify IP's
693 administrative obligation to provide the daily load profiles.

- 694 • Lack of timely response to RES and/or the customer in providing the PPO
695 calculations which determines their Customer Transition Charge ("CTC") and
696 PPO eligibility; time is of the essence, markets change and an opportunities for
697 savings are easily thwarted by a delay in the information the customer requires to
698 "shop."

- 699 • Customers in the IP service territory have a very short window to shop, especially
700 with regard to the Multi-Year transmission charge ("TC"). Such a short election
701 period impedes competition.

- 702 • TC and PPO information should be available on IP's website for all customers,
703 not just the less than 1 MW customers;

- 704 • Uniform switching processes and uniform business practices related to obtaining
705 the customer data necessary to serve retail load should be adopted between the
706 Ameren Companies and IP. All Customer Account Information Authorization
707 Forms and Account Agency Forms should be uniform among the utilities offering
708 retail choice.

- 709 ○ The PPO calculator should be available to RESs without an additional
710 form authorizing release of information by customer even when the RESs
711 possess the customers account and meter number. The requirement for
712 obtaining additional authorization for this information is an unnecessary
713 restriction and creates additional costs to both the RES and the customer
714 through lost opportunity for savings. The PPO calculator should not be
715 "regulated" by the utility. Neither ComEd nor Ameren when it offered the
716 PPO imposed such a restriction. Customers and RESs alike should have
717 open access to the calculator with the proper authorization and in the state
718 of Illinois, a customer providing the RES the account and meter number is
719 deemed authorization to access the customer information.

- 720 ○ IP should provide all PPO information on its website. Currently, IP
721 calculates the PPO manually for customers of ≥ 1 MW and transmit data
722 via fax or email in a format that is not easily downloaded to RES systems.
723 The PPO calculation is provided through their website for customers
724 smaller than 1 MW.

- 725 ○ IP should also provide all the meter information under a single account.
726 ComEd and Ameren both provide information on all the meters. When a
727 RES requests account information; it must go to the expenses and effort of

obtaining prior bills or some other means of obtaining all the meter numbers assigned to an account from the customer. This creates additional work for the customer to switch suppliers. When a request is made for a specific account and a meter number is provided; IP should provide all data for all meters.

- The Multi-Year TC election window for IP consumers is currently too short to provide meaningful benefit to consumers; the enrollment window for such election should be a minimum of seventy-five (75) days. The corresponding PPO enrollment window applicable during the one and only Multi-Year TC snapshot period should also be a minimum of seventy-five (75) days so that customers have the necessary time to evaluate all options. Currently, if taking the PPO, a customer must provide thirty (30) days notice which eliminates any opportunity to evaluate a supply option and Multi-Year TC;
- Eliminate the \$1.00 charge applied each time monthly usage data is downloaded by RES from the website;
- Eliminate the PPO calculator charge. Neither ComEd nor Ameren (when it offered the PPO) charged customers or RESs for this information.
- Eliminate the restriction on consumers to elect to receive separate bill invoices for their gas and electric service; and
- Eliminate internal summary data charge (aka 8760 charge).

Q. What is the timeframe in the ComEd service territory for multi-year CTC elections?

A. For customers for whom customer-specific CTCs are calculated, customers/RESs must provide ComEd with a written election of service notice within the following timeframe:

<u>Election Year</u>	<u>Notification Period</u>
2003	April 28, 2003 – July 14, 2003
2004	February 2, 2004 – April 19, 2004
2005	February 1, 2005 – April 18, 2005

For all other customers/RESs ComEd must receive a written election of service notice within the following timeframe:

<u>Election Year</u>	<u>Notification Period</u>
2003	April 28, 2003 – July 14, 2003

Q. What is the enrollment timeframe for Multi-Year TC elections in the IP service territory?

A. Currently, IP's retail tariffs provide for bi-monthly MVI snapshots which in turn calculate the TC. The Multi-Year TC in IP is offered only during the January bi-monthly market valuation. While we will not argue or discuss the merits of a more frequent MVI as that was litigated in the previous MVI dockets; we will encourage and discuss the effect the one-time enrollment opportunity has on customer choice.

The purpose of the Multi-Year TC is to provide an opportunity for customers to minimize the risk inherent in volatile energy markets and TCs. The customer could "lock-in" that charge and therefore minimize its exposure to the volatility and provide for a better benchmark on what to budget for energy expenses over a longer period of time.

Q. What is your recommendation regarding the enrollment time for Multi-Year TC elections in the IP service territory?

A. The problem with the current enrollment window is that it provides a very limited timeframe for customers to evaluate risk, make a decision and execute the necessary supply and/or PPO contracts in a timely fashion. For example, consumers with early

meter read schedules usually only have days after the publication of the TCs to make a decision. Providing for a full seventy-five (75) day enrollment window for the Multi-Year TC and a corresponding elimination of the thirty (30) day notice for the PPO would go a long way to making the Multi-Year TC a truly viable option for customers looking to mitigate that risk.

Additionally, IP's requirement of two separate forms ("Agreement to Pay Transition Charges" and "Multi-Year Market Value Contract") to elect the Multi-Year TC should be modified to reflect the ComEd business practice of a single form. The two contract-like forms are not customer friendly.

Q. What is your recommendation regarding the charges that are applied each time a supplier pulls data off the IP website?

A. The \$1.00 charge that is applied each time a supplier pulls monthly usage data off the website should be eliminated. A RES should not be required to pay a charge every time it wants to update data, even for customers under contract with the RES. Such a charge is an improper barrier to doing business in the IP service territory.

Q. Please explain why the charges that IP assesses for 8760 data should be eliminated.

A. Ameren does not charge for either monthly or hourly data provided through its website. IP charges \$20 + \$8 per meter for 8760 data. In many cases, the 8760 data is not for a complete year; it may only include eleven (11) months of data, requiring yet another iteration of dialog between the RES and IP, further increasing the cost of this data. In

order to facilitate the development of retail competition, IP should be required to eliminate this charge, and should be required to provide the most recent (12) months of data.

Q. Please explain why the charges IP assesses for the PPO Calculator should be eliminated.

A. Again, IP is the only Illinois utility offering the PPO that charges for this information. The charges are \$4.50 for smaller end-use customers and \$12.50 for larger end-use consumers generally over 1 MW. This rate, however, is not the extent of the actual cost for obtaining this information for the larger 1 MW and greater customers. IP only provides the PPO data by fax or email, as IP continues to manually calculate this information. This charge hinders retail competition not only because it is an increased cost for RESs but it is also charged directly to consumers if they sought such information on their own. Unnecessary charges and inaccessibility to data is a barrier to retail choice.

Q. Please explain the problems associated with becoming the billing agent in the IP service territory.

A. First, this issue is not limited to just the IP service territory; our operational experience has been with both IP and the Ameren Companies on this particular issue. IP and the Ameren Companies currently create separate account numbers for customers who elect to take competitive retail natural gas transportation service and thus create two bills, one for electric service and one for gas service. However, IP has argued for several years now that it cannot create a separate electric bill for a customer that does not take gas

transportation service due to system constraints. If a RES wants to become the billing agent for electric service only, it is required to obtain both the gas and electric bills for customers not electing gas transportation service. IP and the Ameren Companies will not split bills even upon the request of a customer. That should be eliminated.

Q. What is your recommendation on this issue?

A. Dual fuel utilities should be required to split their bills upon customer request.

Q. Do you have any other recommendations related to Illinois Power or Ameren's business practices?

A. Yes. There are two additional issues.

First, the Commission should obtain a commitment from the Ameren Companies that they will not seek to reinstate Rider PPO or seek to collect transition charges throughout the remainder of transition period.

Second, customer notification requirements should be streamlined in order to support choice. ComEd requires little advance notice other than reliance on the DASR date. Under IP's Rate 24, customers are required to provide twelve (12) months notice of intent to elect delivery services. We believe a sixty (60) or ninety (90) day notice is more appropriate.

849 **CONCLUSION**850 **Q. Please summarize your recommendations.**

851 A. As evidenced by several years' worth of reports and analysis conducted by the
852 Commission, retail competition has been slow to develop in the service territories of IP
853 and the Ameren Companies since Illinois' electricity market was restructured in 1997.
854 During the same period, electric competition has steadily grown and matured in the
855 service territory of ComEd. In the instant proceeding, the Commission has the
856 opportunity to look closely at the policies, practices and tariffs of Illinois' respective
857 electric utilities and determine what has allowed customers in northern Illinois to benefit
858 from competition and, conversely, what utility practices have left customers in the
859 remainder of Illinois with few, if any, competitive electric supply options. In the instant
860 proceeding, the Commission can ensure that IP and the Ameren Companies adopt
861 competitive practices that will allow their customers to experience the benefits of
862 competitive supply. The Commission should take full advantage of this opportunity.